

January 20, 2005

Ms. Rosario Marin, Chair
California Integrated Waste Management Board
1001 I Street
Sacramento, CA 95814

Pactiv Corporation
1900 West Field Court
Lake Forest, Illinois 60045

Tel 847-482-2000

Dear Chairman Marin:

Pactiv Corporation ("Pactiv") is pleased to comment on the "Comprehensive Film Plastic Diversion and Management Action Plan and Plastic Trash Bag Program: Report to the Legislature, December 17, 2004" ("Report") by the California Integrated Waste Management Board ("Board"). Pactiv is a manufacturer of plastic foodservice, protective and other packaging products potentially to be affected by the recommendations of the Report.

Pactiv respects and endorses California's laudable goal of protecting the environment, but believes that the recommendations to the legislature described in the Report and discussed in "Interested Parties Meetings" are unrealistically aggressive with respect to the scope and timing of proposed implementation. Pactiv's comments on the Report are broken into five topic areas for consideration by the Board.

A. LANDFILLED MATERIALS

According to the "Statewide Waste Characterization Study, December 2004" ("Study"), only about 9.5% of the overall waste stream going to California's landfills consists of plastics. That puts plastic materials a distant fourth behind organic matter (30.2%), construction/demolition debris (21.7%) and paper (21.0%). In light of those figures (i.e., the first three materials groups represent over 70% of the solid waste stream) and the fact that none of these materials readily degrades in the confines of a landfill, Pactiv believes that regulatory resources might more effectively be used to address the problem of reducing the solid waste stream by focusing on the greater opportunities which appear to be available to reduce organic matter, construction/demolition debris and paper bound for landfill. The landfill problem is not simply or even largely a plastics problem.

Pactiv believes that the landfill problem needs to be re-evaluated, with parties recognizing that it is not specifically a plastics problem, so that more appropriate and effective waste reduction strategies can be defined and implemented. For example, more impactful waste reduction strategies might better address composting of organic matter, beneficial reuse of construction/demolition debris, and recycling of paper.

B. PLASTIC FILM PRODUCTS

As discussed above, the Study indicates that approximately 9.5% of the overall waste stream going to California's landfills consists of plastics. Pactiv produces two main types of products, in addition to trash bags, that may fit into the "Plastic Film Products" category addressed in the program described in the Report; food storage bags and bubble cushioning. In each case, there are significant hurdles to incorporating LLDPE post consumer materials ("PCM") into them.

Food storage bags cannot contain PCM.

The choice of food storage bags' formulary ingredient materials is governed and limited by food additive safety regulations promulgated at the federal level by the U.S. Food and Drug Administration (FDA). Among other things, FDA regulations require food packaging articles to be of "suitable purity," within the meaning of the Federal Food, Drug and Cosmetic Act. Consequently, as made today (i.e., with a single layer of plastic film), food bags cannot be comprised of plastic film that includes PCM because "suitable purity" could not be confirmed. The only means known at this time for introducing PCM into such bags, while preserving their efficacy (i.e., "purity"), would be to employ the FDA's suggested method of "blanketing" recycled plastic film material with a layer of "FDA-approved" virgin plastic film material. In that way, food would not come into contact with the PCM layer. Thus, PCM cannot reasonably be introduced into the manufacture of plastic food bags, because it would either: (i) make affected bags unacceptable for use in food contact applications (i.e., their intended uses) or (ii) be commercially and otherwise impractical (i.e., see, e.g., discussions below concerning the unavailability of quality PCM), while at the same time generating greater volumes of plastic to be landfilled (i.e., because of the employment of multiple layers of plastic film).

There isn't enough quality PCM available for use in bubble cushioning.

On at least one of its bubble cushioning lines, Pactiv historically used PCM in connection with production. That PCM was principally supplied by Pactiv's Jacksonville, Illinois, plant. In recent years, however, PCM has been unavailable for use in the manufacture of bubble cushioning, because all available supplies of quality PCM are needed for production of plastic trash bags bound for California. Nevertheless, and as described below, notwithstanding the diversion of all available quality PCM to the production of plastic bags bound for California, Pactiv has been unable to secure quality PCM in sufficient quantity to comply with the 10% content requirements of current California bag regulations. Based on the fact that insufficient quantities of quality PCM exist to meet current PCM content requirements, and available supply continues to decline as other markets for PCM evolve (e.g., such as for plastic lumber, rail ties, etc.), Pactiv believes that there will continue to be insufficient quantities of quality PCM available for inclusion in bubble cushioning product.

Pactiv believes that the Board should more carefully consider diverting plastic film and film products via mechanisms other than closed loop recycling. For example, more fruitful results may be yielded by focusing legislation on conversion technologies or the incorporation of PCM into other types of plastic products (e.g., plastic lumber, railroad ties, etc.).

C. PLASTIC TRASH BAGS

Trash bags are not the cause of California's solid waste problems.

As noted in the "Landfilled Materials" discussion above, plastic materials rank a distant fourth behind organic matter (30.2%), construction/demolition debris (21.7%) and paper (21.0%) in terms of materials congesting California's landfills. According to the Study, plastic materials represent only 9.5% of the overall waste stream flowing into California's landfills. Additionally, according to the Study, only about 1% of the waste stream is comprised specifically of plastic trash bags. The presence of trash bags in a landfill, of course, is not surprising or expected to be eliminated, since they are a common means used to contain trash bound for disposal. Their presence in a 1% volume (i.e., as described above), then, is wholly consistent with that intended use. Diverting other plastic film or film products from the waste stream by requiring their addition into trash bags only ensures that those plastic materials (i.e., the PCM) will be landfilled. Additionally, bags that include PCM may be required to be of thicker gauge in order to offset quality degradation caused by the use of non-virgin materials, so inclusion of PCM in plastic trash bags may actually increase volumes of plastic materials entering California's landfills. Open loop methods of recycling plastic film and film products, therefore, would appear to present more promising opportunities for diverting plastic from landfills and for minimizing the volumes (e.g., by reducing gauge requirements) of plastic destined for there.

There is not enough quality PCM to go around.

As the Board is aware, Pactiv manufactures trash bags that include PCM content. Despite diligent efforts, Pactiv was unable to secure sufficient quantities of quality PCM to enable it to meet California's 10% PCM content requirement in 2003. That plight was shared by Pactiv's competitors. While Pactiv and others have made significant investments of time, money and resources to enhance technologies to permit the use of PCM in their manufacturing processes, it remains the case that only PCM of reasonable quality can be employed or defective and unmarketable products result. For a variety of reasons (e.g., like the new and growing markets for plastic lumber, railroad ties and other plastic products that can be made from recycled materials), the available supply of quality PCM continues to diminish and grow more expensive. Consequently, while the justification for California's 10% PCM content regulation diminishes (i.e., because markets for PCM are developing beyond those mandated by California and otherwise diverting PCM from landfills), the costs of complying with it increase. Pactiv believes that the PCM supply situation will only grow more problematic with the passage of time, as it has in recent years.

Trash bags historically have been source-reduced.

Companies that manufacture plastic trash bags have source-reduced for many years. There is a strong economic (i.e., non-legislated) incentive to do that, because the need to purchase fewer raw materials (e.g., plastic) reduces costs, permitting a party to be more competitive in the marketplace. With respect to plastic trash bags, source reduction generally refers to manufacturing bags of adequate quality at the thinnest gauge. In general, that paves the way for the consumer to get quality products at the cheapest price. The manufacturer is able to be more competitive in the marketplace and generate a smaller volume of trash bags that ultimately will be landfilled. According to some of the comments made during "Interested Parties Meetings,"

California's 10% PCM content requirement for plastic trash bags has necessitated that some companies increase the amount of virgin plastics in their trash bags in order to compensate for the degraded processing capabilities when using PCM.

For these reasons and others that have been more extensively expressed and addressed in other forums, Pactiv supports the suspension and elimination of the 10% PCM requirement for plastic trash bags destined for sale in California.

D. BIODEGRADABLES

According to the Report, plastic film products made from biodegradable resins would be exempt from the mil tax. The desired final disposition of biodegradable plastic film and film products (i.e., diversion from landfill) can be realized only if composting facilities are available. Constructing composting facilities at municipal and regional levels, hiring and training employees, and operating these facilities will take a substantial amount of time and come at a considerable cost. Until such composting facilities are constructed and fully operational, biodegradable bags will continue to go to landfills just like, and their degradation will be at a rate comparable to, non-biodegradable bags. Until biodegradable products are demonstrated to be diverted from the solid waste stream (i.e., from landfill), they generate no benefit to justify a regulatory preference (i.e., exemption).

Pactiv believes that producers of biodegradable bags should participate in the MOU process and not be granted regulatory preference (i.e., exemption), unless and until they demonstrate that their biodegradable products, in fact, have been diverted from the waste stream.

E. MEMORANDA OF UNDERSTANDING

The Report indicates that the Board will implement its process to divert plastic film from landfills using a carrot and stick approach. The Board recommended that Memoranda of Understanding (MOUs) be developed with stakeholders regarding diversion goals. If the goals are met by the deadlines identified, a mil tax will not be imposed on the stakeholders. If the diversion goals are not met, the mil tax will be assessed. Discussion with the Board's staff indicated that all companies covered by an MOU would be penalized (with a mil tax), irrespective of whether individual companies met established targets.

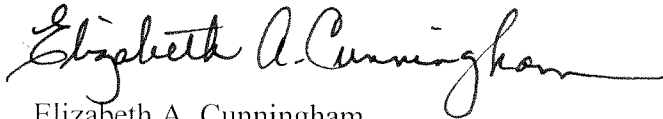
The Report envisions one MOU for each of the five film categories listed in the Study. The MOUs are to be finalized by December 31, 2006. The Report indicates that manufacturers, distributors, suppliers, recyclers, waste collectors, local and state government agencies, etc. would be part of the MOU process. Many of the groups identified have no knowledge or understanding that they are being considered part of the MOU process and will be held accountable for achieving the goals of the MOU.

Board staff indicated that the problems associated with imported film products would be addressed with wholesalers, who will be part of the MOU process. The effort, energy, and time needed to identify, bring together and facilitate development of the MOU will be enormous. Pactiv is concerned about the small number of MOUs to be written, treating "compliant" companies and "noncompliant" companies the same (i.e., with respect to any assessment of a mil tax), and the relatively short timing associated with the MOU process.

Pactiv recommends that the Board create a means to credit companies actively engaged in the process of diverting plastic materials from landfills commensurate with their relative success in those efforts, as opposed to the "sink or swim" structure currently contemplated. That would better avoid "free riders" or, conversely, "throwing the baby out with the bathwater." Rewards should be given to achievers. Sanctions should be imposed on nonperformers.

Pactiv appreciated this opportunity to comment to the Board on its Report and hopes that this dialogue, and the benefits to flow from it, will continue.

Sincerely,

A handwritten signature in cursive script, reading "Elizabeth A. Cunningham". The signature is fluid and extends across the width of the block.

Elizabeth A. Cunningham
Director, Environmental and Regulatory Affairs

cc: Michael Leao, CIWMB
Jay Barnes, Pactiv Corporation
Ned Pendleton, Pactiv Corporation
James Gavin, Pactiv Corporation
James Oas, Pactiv Corporation